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In the

Supreme Court of the United States

OCTOBER TERM, 1941.

No. 589

CLAYTON LOFLAND,
Petitioner,

v.

CLARENCE H. FOX, Receiver of the
HARTFORD STERLING CO., INC.
Respondent.

PETITION FOR WRIT OF CERTIORARI AND
BRIEF IN SUPPORT OF PETITION.

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B. The process of a Court of Equity cannot compel a non-resident to leave his state and respond to proceedings brought therein. Should he subsequently appear, after a court without legal authority had acted, only to protect his rights in the subject matter of the controversy, such acts on his part will not confer jurisdiction 26

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No.

CLAYTON LOFLAND,

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v.

CLARENCE H. FOX, Receiver of the HARTFORD STERLING CO., INC.

Respondent.

PETITION FOR WRIT OF CERTIORARI.

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States.

The petition of Clayton Lofland, in the above captioned case, respectfully shows:

OPINIONS BELOW.

The petitioner filed two petitions, on May 31, 1940, asking that the appointment of a receiver be set aside and that the receivership proceedings be dismissed in the Court of Common Pleas, of Delaware County, Pennsylvania.

That court sitting as a court of equity, heard these two petitions as one, without a jury (P. 36a, 93a) and filed a written opinion (P. 96a, 100a) dismissing them.

The Supreme Court of Pennsylvania heard applicant's appeal from the order of the said Common Pleas Court dismissing said petitions, and in a Per Curiam opinion filed May 12, 1941, which is reported in 20 Atlantic Reporter (2nd) Pages 224, 225 sustained the action of the court below.

The Supreme Court of Pennsylvania denied petitioner's petition for rehearing on May 26, 1941.

JURISDICTION.

The decision and judgment of the Supreme Court of Pennsylvania was rendered on May 12, 1941. A petition for rehearing was denied by that court on May 26, 1941. Your Honorable Court extended the time for the filing of this petition to September 10, 1941.

The jurisdiction of the court is invoked under Sec. 240(a) of the Judicial Code as amended by an Act of February 13, 1925 and amendments thereto.

THE QUESTIONS PRESENTED.

The questions here presented are as follows:

First. Whether a court of equity can assume jurisdiction and appoint a permanent receiver without violating the V and XIV Amendments to the Constitution, where there was no legal service of the bill in equity commencing the proceedings upon the defendant corporation; where there was no hearing nor opportunity to be heard; and where the subject matter of the suit or any other assets were not within the jurisdiction of the court.

Second. Whether a court of equity can assume jurisdiction and appoint a permanent receiver without violating V and XIV Amendments to the Constitution where none of the parties in interest had any legal notice of the filing of the bill in equity, where there was no hearing thereon, nor opportunity to be heard and where the subject matter of the suit is beyond the jurisdiction of the court.

Third. Whether a letter can compel your petitioner a non-resident to leave his state and respond to proceedings brought against him; and whether the appearance of the petitioner after the receiver was appointed without a hearing, only to protect his rights and interest in the controversy, may be declared to confer jurisdiction.

Fourth. Whether petitioner to whom was assigned and transferred certain insurance policies three years previously, constituting the only assets of the defendant corporation, and thus making him the absolute owner thereof,

is an indispensable party; and whether a court of equity three years later can make a decree appointing a permanent receiver affecting his rights to those assets, when he, a resident of another state, was not a party to the proceedings, had no legal notice, nor opportunity to be heard and defend those rights, and the bill in equity filed contained averments attacking the bona fides of his assignments and sought to enjoin him from collecting thereon.

Fifth. Whether petitioner was denied the due process of law and the equal protection of the laws as guaranteed to him by the V and XIV Amendments to the Constitution of the United States.

Sixth. Whether a Court of Equity can without violating the VII Amendment of the Constitution reexamine and set aside the verdict of a jury in the United States Court.

SPECIFICATIONS OF ERRORS TO BE URGED.

The Supreme Court of Pennsylvania in deciding the questions erred as follows:

First. In affirming the action of the said Common Pleas Court of Delaware County dismissing petitions to vacate receiver's appointment and dismiss suit in equity contrary to the provisions of the V, VII and XIV Amendments of the Constitution of the United States and the decisions of the United States Supreme Court in

Pennoyer v. Neff, 95 U. S. 714;
Windsor v. McVeigh, 93 U. S. 274;
Hovey v. Elliott, 167 U. S. 409, 16 S. Ct. 841;
Riverside Cotton Mills v. Menefee, 35 S. Ct. 579;
Webster v. Reid, 11 How. 437;
D'Arcy v. Ketchum, et al., 11 How. 165 and companion cases.

Second. In holding that the jurisdictional questions raised in the petitions which the lower court dismissed for the first time in this case were being relitigated by petitioner since they had already been raised in prior litigation in the court and in the federal court and had already been finally and conclusively determined against him.

Third. In failing to have recognized the fact that petitioner Lofland is an indispensable party in the proceedings, without whose joinder in the action and/or presence, no Court could make a valid decree affecting his rights in the controversy. The Supreme Court of Pennsylvania ignored entirely the applicable decisions of this court in

Williams v. Bankhead, 86 U. S. 563;
Mallow v. Hinde, 12 Wheat 193, 198;
Minnesota v. Northern Securities Co., 184 U. S. 199; 22 S. Ct. 308, 322;
Hooey et al v. Wilson, 9 Wall 501;
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Hipp v. Babin, 19 How. 271, 278.

STATEMENT.

The Hartford Sterling Co. is a corporation of the Commonwealth of Pennsylvania and had its principal place of business on Baltimore Pike, Delaware County, Pennsylvania. The plant of said company was partially destroyed by fire on March 4 and March 8, 1931, respectively.

The Lansdowne Bank and Trust Co. on March 4, 1932, obtained a judgment against said corporation in the Court of Common Pleas of Delaware County, as of September Term 1931, No. 1093 in the amount of $23,520.34 which was later compromised for $5000.00.

In April of 1931 Clayton Lofland, Petitioner, entered into written contract with said corporation for the repair of its building and the replacing of the machinery and equipment therein. Shortly thereafter on July 21 and November 6, 1931, said corporation assigned to petitioner all its right title and interest, by two executed assignments bearing the dates aforesaid, in two certain fire insurance policies issued by the Mechanics and Traders Insurance Company of New Orleans, Louisiana (Pages 71a, 72a, 73a, 74a, 75a, 76a).

On March 4, 1932, said Lansdowne Bank and Trust Co. filed an involuntary petition in bankruptcy in the United States District Court (Cause No. 15412) and after trial before court and jury, a verdict was rendered for the alleged bankrupt, Hartford Sterling Co. defendant herein. (Pages 85a, 86a, 87a, 88a, 89a). In the petition in bankruptcy aforementioned, said Lansdowne Bank and Trust Co. averred that the aforesaid assignments to Lofland were made within four months and the Hartford Sterling Co. was insolvent when said assignments were made to him.

(Pages 85a, 86a, 87a). The jury found that although the policies of insurance heretofore mentioned, had been transferred to Lofland no act of bankruptcy had been committed (Pages 88a, 89a). Subsequently on April 26, 1933, plaintiff filed its motion for a new trial which was never disposed of. On May 24, 1934, after negotiations had been carried on, and an agreement had been completed with Lofland and the Hartford Sterling Co., counsel for the receiver, then acting in the dual role as counsel for the plaintiff in the case and for Lofland, withdrew said motion without notice to defendant in that case (Pages 90a, 91a) in violation of said valid and binding agreement.

While said bankruptcy cause was still pending and undetermined, two suits were commenced in the United States District Court against the insurance company, by petitioner Lofland as assignee and use plaintiff and Frank E. Wolcott and J. Herbert Stearne mortgagees, as another use plaintiff (March Term, 1932, Nos. 17392 and 17394 to recover the amount of loss sustained by the said corporation from the fires to its plant as aforesaid. On May 21, 1934, while said motion for a new trial was still undecided and had not yet been withdrawn, said Lansdowne Bank and Trust Co. issued an execution upon its judgment, recovered in the amount of $23,520.34 as aforementioned, sold all of the machinery, equipment and other tangible assets belonging to the said Hartford Sterling Company and thus completely put the said corporation out of business. (Pages 50a, 51a). This it did, although it had agreed in writing to compromise its judgment for $5000.00; to withdraw all proceedings pending in the United States District Court; and to permit said corporation to carry on its business (Pages 77a, 78a, 79a, 80a, 81a, 82a) in order to induce your petitioner to advance over $2500.00 costs and expenses necessary to maintain the appeal in the Superior Court of Pennsylvania

from the conviction of Harry I. Avrech, and to prosecute with success the two suits against the insurance company.

In order to carry out a well laid scheme to defraud petitioner Lofland of his rights to the proceeds of the two suits against the insurance company and his rights under the Bankruptcy Act, and after the motion for a new trial had been withdrawn without notice to anyone, plaintiff, Lansdowne Bk. & T. Co. on June 6th, 1934 filed its bill in equity in this case in the Delaware County Court of Common Pleas, for the appointment of a receiver and praying that the court enjoin the petitioner Lofland from receiving the amount of loss recoverable in the two suits pending in the District Court; that defendant, Hartford Sterling Co., be further restrained from making any settlement with or payment to your petitioner Lofland; and praying also that defendant corporation admittedly insolvent, with no tangible assets, unable to pay its debts and not operating its business, be wound up and dissolved. (Pages 37a, 38a, 39a, 40a).

On the very same day the bill was filed with the court, without any service of process upon defendant and/or its non-resident officers; without the joinder of Lofland; without any legal notice to petitioner, a resident of another state, who was vitally interested in this proceeding or controversy as the assignee and owner of the insurance policies and whose rights thereto had been determined by a jury in the District Court, without a hearing being held thereon; the Delaware County Court entered a decree on that same day, depriving the petitioner Lofland of every right he had under the two assignments aforesaid.

On July 2, 1934, petitioner Lofland on behalf of himself and other creditors of defendant corporation, filed a petition to vacate the receivership, but said petition was dis-

missed by the court on the same day it was filed without a hearing or argument.

After several years of litigation in the state and federal courts, petitioner Lofland on May 31, 1940 filed petitions in the Court of Common Pleas of Delaware County, Penna., to dismiss the suit in equity and vacate the appointment of the receiver based upon jurisdictional reasons there and then raised for the first time (P. 5a, 6a, 7a, 8a, 9a, 22a, 23a, 24a, 25a, 26a, 27a), which petitions after hearing were dismissed on October 25, 1940 (P. 94a, 100a). An appeal to the Supreme Court of Penna. was taken by petitioner from the action of the said Court of Common Pleas and on May 12, 1941, the said court dismissed the appeal erroneously holding that said jurisdictional questions had already been adversely determined against Lofland and that he was attempting to relitigate the same issues by the present petitions under review by that court. The opinion of the Supreme Court of Penna. was filed May 12, 1941, and is reported in 20 Atlantic Reporter, (2nd) Pages 224, 225.

REASONS FOR GRANTING THE WRIT.

First. The Supreme Court of Pennsylvania in sustaining the order of dismissal of the Common Pleas Court of Delaware County, ignored entirely and gave no consideration whatsoever to the denial to petitioner of his constitutional rights—that of due process of law and the equal protection of the laws.

Petitioner, a preferred creditor, had obtained a finding in his favor by a jury in a bankruptcy court, that certain insurance policies had been transferred to him (Pages 88a,

89a) Without having had the said verdict of the jury set aside or reversed, and having withdrawn without any notice to your petitioner a motion for a new trial, the Lansdowne Bank & Trust Company by Wm. D. Gordon, Secretary of Banking, Receiver, applied to the Court of Common Pleas of Delaware County, for a receiver of the Hartford Sterling Co., thus depriving petitioner, a non-resident of New Jersey, of his rights under the Federal Bankruptcy Act of 1898 and its amendments. This constituted a denial to your petitioner of the equal protection of the laws guaranteed to him by the XIV Amendment to the Federal Constitution.

Second. The Supreme Court of Pennsylvania, in denying petitioner's appeal from the order of the Court of Common Pleas of Delaware County, entirely ignored and gave no consideration to the violation by the said creditor, Wm. D. Gordon, Secretary of Banking, Receiver of the Lansdowne Bank & Trust Co., and of the said court of Common Pleas, of the VII Amendment to the Constitution of the United States, which provides inter alia— . . . "and no fact tried by a jury shall be otherwise re-examined in any court of the United States, than according to the rules of the common law." When the said Court of Common Pleas appointed a receiver without notice and without a hearing, and enjoined the Hartford Sterling Co. and petitioner Lofland from collecting the proceeds of the insurance policies by virtue of the assignments made to him (see decree of Common Pleas Court of Delaware County dated June 6, 1934), and when the receiver subsequently was permitted to retry the issue concerning Lofland's assignments, petitioner was deprived of the protection to him of the verdict of the jury in the Federal District Court which was in his favor.

Third. The defendant in that case, Hartford Sterling Co., was denied due process of law when the said Court of Common Pleas appointed a permanent receiver the same day the bill in equity was filed, despite the failure of the creditor, Wm. D. Gordon, Secretary of Banking, Receiver of the Lansdowne Bank & Trust Co., to legally serve the said corporation and/or its non-resident officers with the bill of complaint and the receiver was appointed without any hearing ever being held. The fact that no legal service of the bill in equity was ever made upon the Hartford Sterling Co. and/or its non-resident officers is clearly evidenced by referring to the docket entries of this case in the Court of Common Pleas of Delaware County, where it will be noted that no appearance for the said company was filed until July 25, 1934, although the bill was filed six weeks earlier, June 6, 1934, and a permanent receiver was appointed that very same day. (See Record, page 45a.) Furthermore, we have searched in vain for any affidavit of service upon the said corporation and/or its officers among the court records of this case. For the Court of Common Pleas of Delaware County to have assumed jurisdiction under such a set of circumstances as hereinabove detailed, was a denial to defendant in that case, the Hartford Sterling Co., and your petitioner and its other creditors of due process of law and the equal protection of the law.

Fourth. The action of the Court of Common Pleas of Delaware County complained of, does not constitute due process of law, and your petitioner was denied that right when he a non-resident of New Jersey, holding absolute title to the sole remaining assets of the said Hartford Sterling Co., was deprived of his property by the appointment of a permanent receiver. Said receiver seized the assets belonging to petitioner, which were without the juris-

diction of said court. Again, when it proceeded to determine the personal rights and obligations of petitioner, a non-resident, over whom it had no jurisdiction at the time, and having no jurisdiction over the subject matter of the controversy, its proceedings are absolute nullities, its judgments void, and the acts of the court are violative of the V and XIV Amendments to the Federal Constitution.

Fifth. The decision of the Supreme Court of Pennsylvania affirming the order of dismissal of the Court of Common Pleas of Delaware County, is untenable, and in conflict with the weight of authority.

Sixth. The decision of the Supreme Court of Pennsylvania affirming the judgment of the court below in error, is directly in conflict with the applicable decisions of this Court, relative to the rights of a non-resident, and an indispensable party to the controversy. There was no notice nor opportunity given your petitioner to appear and defend his rights. Petitioner was the owner of the sole remaining assets of the Hartford Sterling Co., viz.—the insurance policies. In the bill in equity, the complaining creditor attacked the bona fides of the assignments of the said policies to petitioner altho the District Court had adjudicated this question in his favor. In the same bill, in the prayer thereof, the said complainant asked that petitioner be enjoined from collecting the proceeds of the policies by virtue of the assignments he held thereto. (Record, page 25a). He was an indispensable party to these proceedings, yet given no opportunity to appear and be heard in protection of his rights to the property which was being snatched from him. The only notice he received was a letter from counsel for the complaining creditor that he intended to file a bill in equity for the appointment of a receiver. (See Record 83a.) There was

no notice to petitioner that the Court of Common Pleas of Delaware County would hear this controversy on June 6, 1934. Under the circumstances petitioner had a right to receive proper notice of the date, time and place of a hearing. This he never received. Since he is an indispensable party he should have been given an opportunity to appear and be heard. He was denied this right also. The judgment rendered in his absence, therefore, is unjust, arbitrary and is a denial to him of the equal protection of the laws. A judgment of this sort is a deprivation of his property without due process of law.

PRAYER FOR WRIT.

Wherefore, your petitioner, referring to the attached brief in support of the foregoing reasons for granting the writ, respectfully prays that this Honorable Court issue a writ of certiorari directing the Supreme Court of Pennsylvania to certify and send to this Court a full and complete transcript of the record and all proceedings in the case numbered and entitled on its docket, "No. 154, January Term, 1941, William D. Gordon, Secretary of Banking, Receiver of the Lansdowne Bank and Trust Co., vs Hartford Sterling Co., a corporation of the State of Pennsylvania, appeal of Clayton Lofland," to the end that the same may be reviewed and determined by this Court, as provided by law, and that said judgments of the Supreme Court of Pennsylvania and the Court of Common Pleas of Delaware County may be reversed, and that your petitioner may have such other and further relief in the premises as to this Honorable Court may seem meet and just.

And your petitioner will ever pray.

CLAYTON LOFLAND,

Petitioner.